IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9230 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NANDLAL NANALAL TAILEE

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for the Petitioner.

Mr.Pancholi, Assistant GOVERNMENT PLEADER, for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 16/01/2003

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order, by which the petitioner is detained under Section 3(2)(a) of the

Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980. The said detention order is passed on 19.8.2002, and along with the detention order, the petitioner is also served with the grounds of detention.

As per the grounds mentioned, the petitioner, who is doing the business of selling kerosene, was found to have indulged himself in black-marketing of blue kerosene, which is an essential article and which is meant for distribution to people at a fixed rate. As per the grounds of detention, the petitioner, who is doing his business of white kerosene, was found dealing in blue kerosene business in an unauthorised manner and quantity of the said blue kerosene was also found from his residence. Quantity of 3900 litres of white kerosene was seized and was kept under seizure. Sample of kerosene was also taken and the same was sent for chemical analysis. After receiving the report from the Chemical Analyst, the petitioner was detained under the aforesaid detention order.

The said detention order is challenged by the petitioner mainly on two grounds, viz., (1) delay in deciding the representation by the authority; and (2) delay in passing the impugned order from the date of occurrence of the incident.

So far as the delay in passing the detention order is concerned, it is not in dispute that the date of incident in question is 12.5.2002. On the said day, certain quantity of kerosene was seized from the petitioner. On that very day, the statement of the petitioner was also taken, and at the time of inspection, the petitioner has already admitted before the authority that he has illegally obtained the quantity of such kerosene and he had also admitted the fact that there is presence of blue colour in the aforesaid white kerosene. That part is also mentioned in the detention order. In spite of the aforeaid fact, the authority, ultimately waited for a long time and passed the detention order on 19.8.2002, even though the incident in question had taken place on 12th May, 2002.

In the affidavit-in-reply, explanation is given by the detaining authority to the effect that the Laboratory Report was received by the authority on 10.7.2002, and, therefore, after receiving the report, the detention order is passed. Averment in this respect is finding place in paragraph 8 of the reply of the detaining authority. It is stated by the authority in

paragraph 8 as under :-

> " ... ...
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> 8. With respect to the averments made in Para 4(m) the same are denied. It is submitted that there is no delay in passing the order of detention. The order of detention is passed on 19.8.2002 which is based on the inspection carried out on 12.5.2002. During the course of inspection, the sample was sent for analysis. The report was received on 10.7.2002 and it was found that the stock of Kerosene was of blue colour. The analysis report is the main documents. Therafter the order of detention is passed and, therefore, there is no delay in passing the order of detention as alleged by the petitioner.
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> ... ..."

In my view, by this averment, the delay in passing the order is not satisfactorily explained. It is required to be noted that the detenu himself admitted as back as on 12th May, 2002 that there is presence of blue article / colour in the kerosene itself. He had even admitted in his statement before the Authority about obtaining the possession in an illegal manner. In that view of the matter, it was not necessary to wait till the report of the Chemical Analyst, as, ultimately, the object of detention is to see that the person may be immediately prevented from doing such illegalities, and, for preventing him from indulging in further activity of black-marketing, immediate action is required to be taken. Delay in passing the order of detention will frustrate the entire object of passing the detention order. Unfortunately, this aspect is lost sight of at the end of the detaining authority. It is also required to be noted that, even otherwise, the Laboratory Report was received by the Authority on 10.7.2002, yet, the detention order is passed after about one-and-a-half months, for which there is absolutely no explanation in the reply. When there is a prima facie material available with the detaining authority, in my view, it was not necessary for the detaining authority to wait for such a long time before passing the order of detention.

On behalf of the petitioner, reference is made to the decision of this court in Special Civil Application No.78 of 2002, dated 16.3.2000. This Court has observed as under in the said decision :-

> " ... ...
>
> 6.1 So far as delay in passing of the order is concerned, there is no dispute about the fact that inspection was carried out on 11th August, 1999 and the order was passed on 13th December, 1999. Time gap between these two days is not explained by the detaining authority in the affidavit-in-reply. In paragraph 11 of this affidavit-in-reply, the detaining authority states as under :-
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> "I say that it is true that inspection of shop was carried on 11.8.1999 and order of detention is passed on 13.12.1999, but at the same time, live-link is not snapped and it cannot be said that stale incidents are considered for the purpose of passing of the order of detention."
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> Barring this, there is no other explanation coming from the detaining authority. If the grounds of detention are seen, the detaining authority has observed that the powers under Section 3(2) of the PBM Act are exercised in order to "immediately prevent the petitioner from continuing his black marketing activities". This subjective satisfaction would stand vitiated, if the detaining authority does not take immediate action. If the subjective satisfaction is genuine, action ought to have been taken by the detaining authority and, for that purpose, as per the statement made at the Bar by Mr.Thakkar, the last statement, during the inquiry, was recorded on 16th September, 1999. thereafter, there is no further Inquiry / Investigation and the order is passed on material collected before that date and, therefore, there is at least a delay of about three months in passing the order. This cannot justify the genuineness of

satisfaction of the detaining authority about the immediate need for exercise of powers under PBM Act for immediately preventing the petitioner from pursuing his activities. Under these circumstances, the petition deserves to be allowed.

... ..."

In view of the aforesaid aspect of the matter, in my view, it is not required to consider the question about delay in deciding the representation as the order is required to be set aside mainly on the ground of delay in passing the impugned order from the date of the occurrence of the incident in question.

The petition is accordingly allowed on the aforesaid ground and the order of detention is quashed and set aside. The petitioner is ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is accordingly made absolute.

(P.B. Majmudar, J.)

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(apj)